

EMERGENCY RULE 2005-04

Pursuant to his authority under Ark. Code Ann. §§ 26-18-301 and 26-52-105, the Director of the Arkansas Department of Finance and Administration promulgates the following rule for the purpose of implementing Act 1693 of 2005.

SALES OF HEAVY EQUIPMENT

1. EFFECTIVE DATE: This rule shall be effective on and after July 1, 2005.

2. PURPOSE: This rule is promulgated to implement and clarify the collection of sales and use tax on sales of heavy equipment and to establish the procedure for affixing decals in connection with such sales as required by Act 1693 of 2005.

3. DEFINITIONS:

A. "Heavy equipment" includes rough terrain fork lifts, scissor lifts, extendable boom lifts, cranes, trenchers, loader backhoes, excavators, bulldozers, motor graders, crawler tractors and loaders, skid-steer loaders, scrapers, earth movers, compaction equipment, asphalt pavers, demolition equipment, concrete pavers, wheel loaders, rock drills, portable air compressors that are 100 CFM or greater, cable plows, boring machines or any other equipment determined by the Director to be heavy equipment.

(i) Demolition equipment is limited to equipment that is used to demolish structures or highway.

(ii) Rock drills are limited to equipment used to drill holes in rock or concrete.

B. Unless specifically listed as heavy equipment in paragraph A, an item will not be considered to be "heavy equipment" unless the item is:

(i) propelled by its own internal engine or internal power source; and

(ii) intended for outside use.

C. Heavy equipment does not include hand held tools

D. With the exception of portable air compressors 100 CFM or greater, heavy equipment does not include portable tools and attachments.

4. GENERAL INFORMATION:

A. All sales of new and used heavy equipment are subject to sales or use tax unless otherwise exempted. The tax shall be collected, reported and remitted by the heavy equipment dealer at the time of sale.

B. At the time of sale, every dealer who sells heavy equipment shall affix a decal to each piece of heavy equipment sold as proof that either: 1) sales tax has been paid on the heavy equipment; or 2) either the heavy equipment or the purchaser of the equipment is

exempt from tax. The dealer shall record the decal number on the sales invoice or other document evidencing the sale.

C. The dealer shall affix the decal in a prominent and clearly visible place on the heavy equipment.

D. A red decal shall be affixed to heavy equipment that is taxable and for which the dealer collected the tax. If the equipment is exempt from tax under the farming exemption, a blue decal shall be affixed. If the equipment is exempt from tax under any other tax exemption (i.e., sale for resale, manufacturing, timber harvesting, etc.), a green decal shall be affixed.

E. A dealer who sells used heavy equipment shall remove the old decal from the used equipment before it is resold and a new decal shall be affixed when the item is resold. If the dealer fails to remove the old decal, the Director shall assess the following penalties:

- i) One hundred dollars for the first offense;
- ii) Two hundred dollars for the second offense; and
- iii) Five hundred dollars for the third and subsequent offenses.

F. Decals may be obtained from the Department of Finance and Administration, Sales and Use Tax Section, P.O. Box 1272, Little Rock, Arkansas 72203.

G. In the event a decal on heavy equipment is lost or damaged, the purchaser of the equipment may obtain a replacement decal from the Department of Finance and Administration. Before a replacement decal will be issued, the purchaser must provide the original sales invoice or other document evidencing the sale that shows the original decal number recorded by the dealer at the time of sale.

H. Any person who purchases heavy equipment for storage or use within Arkansas from a dealer located outside of Arkansas, and who does not pay tax to the out of state dealer, shall be liable for Arkansas use tax.

(i) A purchaser of heavy equipment who does not pay tax to the out of state dealer is required to pay Arkansas use tax to the Department of Finance and Administration. The tax shall be reported and paid to the Sales and Use Tax Section. Upon payment of the tax, the purchaser shall receive a decal to affix to each piece of heavy equipment purchased.

(ii) If the purchaser has paid sales or use tax to an out of state dealer, the purchaser shall present proof to the Sales and Use Tax Section that the tax has been paid, and the purchaser shall receive a decal to affix to each piece of heavy equipment.

In witness whereof, we have hereunto set our hands this ____ day of _____, 2005.

RICHARD A. WEISS, Director
Arkansas Dept. of Finance & Administration

TIM LEATHERS, Deputy Director
and Commissioner of Revenue